

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4033

IN THE MATTER OF:

Served January 7, 1993

Application of SOUTH EAST AREA) Case No. AP-92-29
TRANSIT, INC., Trading as SEAT,)
for a Certificate of Authority --)
Irregular Route Operations)

By application accepted for filing October 23, 1992, South East Area Transit, Inc., trading as SEAT (SEAT or applicant), a District of Columbia corporation, seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver.¹

Notice of this application was served on October 28, 1992, in Order No. 4013, and SEAT was directed to publish further notice in a newspaper and file an affidavit of publication. SEAT complied.

A protest challenging applicant's fitness and requesting an oral hearing was timely filed on November 30, 1992, by Mr. W. Cardell Shelton of S.E. General Construction and Maintenance Corp. A reply by SEAT was timely filed on December 7, 1992.

SUMMARY OF EVIDENCE

SEAT's application includes information regarding, among other things, its corporate status, facilities, vehicle maintenance arrangements, driver training practices, proposed tariff, finances, and regulatory compliance record.

SEAT proposes to provide van service to elderly and disabled persons and reverse commuters who reside in South East Washington, DC, primarily Ward 6. The proposed tariff contains rates for "Medicaid," "Private Pay," and "Reverse Commute" transportation.

SEAT's president certifies on its behalf that applicant has access to, is familiar with, and will comply with the Compact, the Commission's rules and regulations, and United States Department of Transportation regulations relating to transportation of passengers for hire.

¹The Commission's records indicate that SEAT was previously issued a conditional grant of authority on September 21, 1990, subject to the normal contingency requiring production of certain documents within 30 days. The time for production was subsequently extended through June 19, 1991. SEAT did not produce the documents within the time allowed, resulting in a routine denial of the application without prejudice. See In re South East Area Transit, Inc., No. AP-90-21, Order No. 3622 (Mar. 7, 1991).

Applicant filed a balance sheet as of September 30, 1992, showing current assets of \$24,413; fixed assets of \$33,600; liabilities of \$6,954; and equity of \$51,059. Applicant's operating statement for the twelve months ended September 30, 1992, shows operating income of \$75,574; operating expenses of \$24,515; and net income of \$51,059. Applicant's projected operating statement for the first twelve months of WMATC operations shows WMATC operating income of \$229,080; operating expenses of \$225,178; and net income of \$3,902.

It is certified that neither SEAT nor any person controlling, controlled by, or under common control with SEAT has any control relationship with a carrier other than SEAT.

DISCUSSION AND CONCLUSION

This case is governed by the Compact, Title II, Article XI, Section 7(a), which provides in relevant part that:

. . . the Commission shall issue a certificate to any qualified applicant, . . . if it finds that --

(i) the applicant is fit, willing, and able to perform [the] transportation properly, conform to the provisions of this Act, and conform to the rules, regulations, and requirements of the Commission; and

(ii) that the transportation is consistent with the public interest.

Based on the evidence in this record, the Commission finds SEAT to be fit, willing, and able to perform the proposed transportation properly and to conform with applicable regulatory requirements. It is further found that the proposed transportation is consistent with the public interest.

The Commission is unable to sustain the protest. Protestant has neither produced nor offered to produce evidence tending to establish that the applicant is unfit to perform the proposed transportation properly. Instead, protestant relies on conclusory and wholly unsubstantiated accusations about the character of certain shareholders of applicant. Such accusations are not evidence. The Commission requires proof of the predicate facts underlying a protestant's allegations. At the very least, it must reasonably appear from the protest that such evidence exists. The protest before us falls in that regard. What little is offered by way of support -- newspaper articles, a public notice, and protestant's own correspondence -- is stale and rife with multiple-hearsay.² By no means can this be considered admissible evidence on which a decision may be based.

²Regarding protestant's implication that certain United States Department of Housing and Urban Development (H.U.D.) reports from 1988-1991 establish a lack of shareholder fitness, not only has protestant failed to satisfy his burden of producing said reports and explaining how they support his conclusions and how those conclusions support his protest, but H.U.D.'s award of \$50,000 in the name of shareholder Anacostia Economic Development Corporation on May 1, 1991, is entirely to the contrary.

Similarly, the Commission will deny protestant's request for oral hearing. Commission Regulation No. 54-04(b) requires that a request for oral hearing must contain reasonable grounds showing good cause to require such hearing, including the evidence to be adduced at oral hearing and the reason(s) why such evidence could not be adduced without oral hearing. Protestant makes no attempt at the showing required by this regulation. The sole purpose put forth by protestant for holding a hearing is to allow protestant to testify, but, without any indication of what the substance of that testimony would be and why it could not already have been provided in the protest, we have no grounds for granting the request.

The Commission recognizes that Mr. Shelton is appearing pro se. But that does not relieve him of the burden that all protestants have: making a prima facie showing based on admissible evidence bearing on relevant issues.

THEREFORE, IT IS ORDERED:

1. That South East Area Transit, Inc., trading as SEAT, 2019 Martin Luther King, Jr. Avenue, S.E., Washington, DC 20020 is hereby conditionally granted, contingent upon timely compliance with the requirements of this order, authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver.

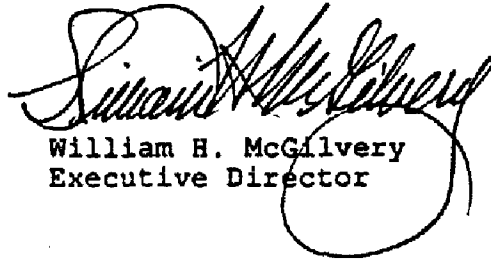
2. That South East Area Transit, Inc., trading as SEAT, is hereby directed to file the following documents with the Commission within 30 days from the date of this order, or such additional time as the Commission may direct or allow: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 3623; (b) four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) an equipment list stating the year, make, model, serial number, vehicle number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue operations; and (e) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61, for which purpose WMATC No. 171 is hereby assigned.

3. That upon timely compliance with the requirements of the preceding paragraph and acceptance of the documents required by the Commission, Certificate of Authority No. 171 shall be issued to South East Area Transit, Inc., trading as SEAT.

4. That unless South East Area Transit, Inc., trading as SEAT, complies with the requirements of this order within 30 days from the date of its issuance, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void and the application shall stand denied in its entirety effective upon the expiration of said compliance time.

5. That the protest and request for oral hearing of Mr. W. Cardell Shelton are hereby denied.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS DAVENPORT, SHIFTER, AND SHANNON:



William H. McGilvery
Executive Director